



MAIL STOP  
AMENDMENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: B. Herman Attorney Docket No.: WEYE121341/24873  
Application No.: 10/727,446 Group Art Unit: 3643  
Filed: December 3, 2003 Examiner: J.L. Gellner  
Title: USE OF A LOW NITROGEN FERTILIZER  
TO PROPAGATE SHOOTS FROM A LOG

TRANSMITTAL LETTER

Seattle, Washington 98101

June 17, 2005

TO THE COMMISSIONER FOR PATENTS:

A. Transmittal

Transmitted herewith is a response in the above-identified application. No additional claim fee is required, as shown below.

COMPUTATION OF FEE

	Claims Remaining After Amendment	Highest Number Previously Paid For	Present Extra	Rate	Additional Fee
Total Claims	16	-	16	= 0 x 50	= 0
Independent Claims	1	-	3	= 0 x 200	= 0
<b>TOTAL</b>					<b>\$0</b>

B. Additional Fee Charges or Credit for Overpayment

The Commissioner is hereby authorized to charge any fees under 37 C.F.R. §§ 1.16, 1.17, and 1.18 which may be required during the entire pendency of the application, or credit any overpayment, to Deposit Account No. 03-1740. This authorization also hereby includes a request

LAW OFFICES OF  
CHRISTENSEN O'CONNOR JOHNSON KINDNESS<sup>PLC</sup>  
1420 Fifth Avenue  
Suite 2800  
Seattle, Washington 98101  
206.682.8100

for any extensions of time of the appropriate length required upon the filing of any reply during the entire prosecution of this application.

Respectfully submitted,

CHRISTENSEN O'CONNOR  
JOHNSON KINDNESS<sup>PLLC</sup>



Barry F. McGurk  
Registration No. 43,340  
Direct Dial No. 206.695.1775

I hereby certify that this correspondence is being deposited with the U.S. Postal Service in a sealed envelope as first class mail with postage thereon fully prepaid and addressed to Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the below date.

Date: June 17, 2005 Barry F. McGurk

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LAW OFFICES OF  
CHRISTENSEN O'CONNOR JOHNSON KINDNESS<sup>PLLC</sup>  
1420 Fifth Avenue  
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RESPONSE TO OFFICE ACTION

Seattle, Washington 98101

June 17, 2005

TO THE COMMISSIONER FOR PATENTS:

In view of the comments the follow, applicant submits that all of the pending claims are in condition for allowance.

Rejection of Claims 1-3, 5, and 10-14 Under 35 U.S.C. § 102(b) As Being Anticipated by Radwan et al. (New Forests 3:21-30 (1989))

Independent Claim 1, from which Claims 2, 3, 5, and 10-14 depend, recites a method for promoting the growth of shoots from a log. The Examiner characterizes the Radwan et al. publication as disclosing a method of promoting the growth of shoots from a log. In this regard, the Examiner characterizes the "younger trees" mentioned at the top of page 23 of the Radwan et al. publication as being logs.

Applicant submits that trees are not logs. The term "log" refers to a cut piece of timber. Thus, for example, in the context of trees, the definition of the noun "log" provided by the *American Heritage College Dictionary* (3d ed.) is:

- 1.a. A usu. large section of a trunk or limb of a fallen or felled tree. b. A long thick section of trimmed unhewn timber.

A photocopy of the relevant page of the *American Heritage College Dictionary* is attached hereto as Attachment A.

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CHRISTENSEN O'CONNOR JOHNSON KINDNESS<sup>PLC</sup>  
1420 Fifth Avenue  
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206.682.8100

The term "log" is used in the present application in a manner that is consistent with its ordinary meaning as set forth in the *American Heritage College Dictionary*. Thus, for example, the present application states that:

Alder, Beech or Birch logs are preferably cut from the lower, healthy, branches of an Alder, Beech or Birch tree, although cut logs from upper branches may also be used. (Present Application, p. 3, lines 12-13.)

For the foregoing reasons, Applicant submits that the Radwan et al. publication does not disclose the growth of shoots from a log, nor methods for promoting the growth of shoots from a log.

Additionally, the Radwan et al. publication does not disclose the step of applying a fertilizer solution, that comprises less than about 0.01% (w/v) nitrogen, to a log, as required by independent Claim 1 of the present application. In the Office Action, the Examiner refers to the application of fertilizer solution, that comprises less than about 0.01% (w/v) nitrogen, to logs, and cites to the "intermittent overhead mist" mentioned in the second paragraph of page 24 of the Radwan et al. publication. Applicants note, however, that the intermittent overhead mist referred to in the second paragraph of page 24 of the Radwan et al. publication was applied to cuttings that were cut from the alder trees mentioned on page 23 of the Radwan et al. publication.

Cuttings were inserted 2-4 cm into a moist rooting mixture of vermiculite and perlite (1:1 v/v) placed in the bottom of a mist chamber. . . . The chamber was maintained at 25 +/- 2°C during the day and night and was provided with intermittent overhead mist of a 24-sec spray per hour during the day. (Radwan et al. publication, page 24, second paragraph)

Even assuming, without conceding, that the "younger trees" referred to at the top of page 23 of the Radwan et al. publication are logs, the Radwan et al. publication does not disclose that these alder trees were fertilized with a fertilizer solution that comprises less than about 0.01% (w/v) nitrogen.

Thus, the Radwan et al. publication does not anticipate Claim 1, or claims dependent therefrom, of the present application.

LAW OFFICES OF  
CHRISTENSEN O'CONNOR JOHNSON KINDNESS<sup>PLC</sup>  
1420 Fifth Avenue  
Suite 2800  
Seattle, Washington 98101  
206.682.8100

Rejection of Claims 4, 6, 9, 15, and 16 Under 35 U.S.C. § 103(a) As Being Unpatentable Over Radwan et al.

For the reasons set forth in the response to the Examiner's rejection of Claims 1-3, 5, and 10-14 Under 35 U.S.C. § 102(b), applicant submits that the Radwan et al. publication does not teach or suggest a method for promoting the growth of shoots from a log. The Radwan et al. publication discloses methods for promoting growth of shoots from an alder tree, but provides no teachings, suggestion, or guidance, with respect to methods for promoting the growth of shoots from alder logs.

Consequently, applicant submits that the subject matter of Claims 4, 6, 9, 15, and 16 is not obvious in view of the teachings of Radwan et al.

Rejection of Claims 7-9 Under 35 U.S.C. § 103(a) As Being Unpatentable Over Radwan et al. in View of Huss-Danell (Huss-Danell, K., et al. "Conditions for Rooting of Leafy Cuttings of *Alnus incana*," *Physiologia Planarum* 49(2):113-115, 1980)

For the reasons set forth in the response to the Examiner's rejection of Claims 1-3, 5, and 10-14 under 35 U.S.C. § 102(b), applicant submits that the Radwan et al. publication does not teach or suggest a method for promoting the growth of shoots from a log. The Radwan et al. publication discloses methods for promoting growth of shoots from an alder tree, but provides no teachings, suggestion, or guidance, with respect to methods for promoting the growth of shoots from alder logs. These deficiencies are not cured by the teachings of Huss-Danell which discloses conditions for promoting rooting of cuttings.

Consequently, applicant submits that the subject matter of Claims 7-9 is not obvious in view of the teachings of Radwan et al. in view of Huss-Danell.

## CONCLUSION

In view of the foregoing arguments, applicant submits that all of the pending claims are in condition for allowance. Favorable action is requested.

Respectfully submitted,

CHRISTENSEN O'CONNOR  
JOHNSON KINDNESS<sup>PLLC</sup>



Barry F. McGurl  
Registration No. 43,340  
Direct Dial No. 206.695.1775

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